

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GREAT AMERICAN LIFE	:	No. 1:12-cv-00828
INSURANCE COMPANY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	ORDER
	:	
MARVIN DIXON, <u>et al.</u> ,	:	
	:	
Defendants.	:	

This matter is before the Court on the August 20, 2014 Report and Recommendation of Magistrate Judge Karen L. Litkovitz (doc. 36) concerning pro se Defendant Marvin Shenkin's motion for leave to appeal in forma pauperis in the Court of Appeals for the Sixth Circuit (doc. 34). Defendant Marvin Dixon not only opposed this motion, but he also requested that sanctions be imposed, among them an award of his attorney's fees and costs (doc. 35). He additionally asked, by way of sanction, that we dismiss Defendant Shenkin's appeal as frivolous (id.). The Magistrate Judge has recommended that Defendant Shenkin's motion be denied and that this Court decline to rule on Defendant Dixon's request for the sanction of dismissal on jurisdictional grounds (doc. 36 at 2). No recommendation was made with regard to Defendant Dixon's request for a monetary sanction.

Per standard procedure, proper notice was provided to the parties under 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), including the advice that they would waive further appeal if they failed to file an objection to said Report and Recommendation in a timely manner.¹ Based on a release date of August 20, 2014, that statutorily prescribed period would have lapsed the following September 8 (see doc. 36). No objections were filed by either Defendant by that date. Out of an abundance of caution, however, the Report and Recommendation was sent again to pro se Defendant Shenkin on September 15, 2014, this time by certified mail (see doc. 37).² Shortly thereafter, Defendant Shenkin advised the Court of his tender of the full filing fee required to proceed on appeal, such amount being received on September 26, 2014 (see doc. 39).

With this change in fee status, significant portions of the Magistrate Judge's report obviously are no longer relevant. We find her recommendations still appropriate, however. Accordingly, this Court ACCEPTS the recommendation that Defendant Marvin Shenkin's motion for leave to proceed in forma pauperis on appeal be DENIED, but we deny this motion AS MOOT rather than on its merits. This Court also declines to rule on

¹ See Thomas v. Arn, 474 U.S. 140, 155 (1985); United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981).

² A domestic return receipt acknowledging service was signed by Defendant Shenkin on September 19, 2013 and docketed by the Clerk the following September 23 (see doc. 38).

Defendant Marvin Dixon's "request" for the sanction of dismissal³ as we are without jurisdiction to do so. Defendant Dixon remains free to argue before the Sixth Circuit the alleged frivolity of Defendant Shenkin's appeal.

SO ORDERED.

Dated: October 3, 2014 s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge

³ As stated earlier, Defendant Dixon also "requested" that he be awarded an unspecified amount for his attorney's fees and costs incurred to respond to Defendant Shenkin's motion. Defendant Dixon did not object to the Magistrate Judge's failure to make a recommendation in this regard as was his privilege. Accordingly, the Court presumes that Defendant Dixon has abandoned his "request" for a monetary sanction and thus we make no ruling in this regard.